IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Bhura Ram v. Asstt.Director,S.A.I.,Jodhpur

S.B.CIVIL WRIT PETITION NO.2376/2002
under Articles 226 and 227 of the Constitution of India.

Date of Order : 19th April, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.S.Bhati, for the petitioner.
Mr. Manoj Bhandari, for the respondents.

BY THE COURT :

The award dated 19.12.2001 passed by learned Judge, Labour Court, Jodhpur holding the dismissal of the petitioner workman valid is under challenge in the instant petition for writ.

The facts in brief giving rise to present petition are as follows:-

A girl resident at the Sports Authority of India, Girls Hostel submitted a written complaint to the Assistant Director, Sports Authority of India, Jodhpur to the effect that in the intervening night of 18th and 19th of May, 1995 at about 00.30 hours petitioner Bhuraram, a Class-IV employee working at

the Girls Hostel tried to molest her with ill-sexual intentions. She found him quite close to her in bed with bare body. Being frightened she gave an alarm to call warden of the hostel. The petitioner immediately ran away from the spot.

On basis of this complaint a fact finding committee consisting of three important officers of the Sports Authority of India was constituted by the Assistant Director. The inquiry committee called the petitioner to appear before it to explain the circumstances but he did not choose to appear before the committee. The girl making allegation against the petitioner reiterated the facts stated by her in the complaint. The committee also recorded statements of certain other persons connected with the affairs of the hostel. The committee after considering all the relevant facts reached at the conclusion that the petitioner intensely wanted to commit rape with girl trainee and on that basis the petitioner who was said to be working on contract basis was dismissed from services.

Being aggrieved by dismissal from service the petitioner raised a industrial dispute which was referred to Labour Court, Jodhpur by appropriate government for its adjudication under a notification dated 18.4.1998. The petitioner submitted a claim petition before the learned Labour Court contending

therein that no inquiry was conducted by the employer in accordance with law before inflicting penalty of dismissal upon him. The petitioner also contended that his discharge from service amounts retrenchment as defined under Section 2(oo) of the Industrial Disputes Act, 1945 and the same was affected without adhering mandatory condition precedent for a valid retrenchment, therefore, the retrenchment deserves to be declared void ab-initio.

The employer filed a return to the claim with an assertion that the inquiry was conducted on 19.5.1995 before taking action but the workman without any just and valid reason did not participate in that. The employer also asserted that the penalty imposed was commensurating to the delinquency.

To substantiate the contentions made in the claim an affidavit was filed by the workman and was also cross examined by the representative of the employer. The statements of warden of the girls hostel and certain other co-employees were taken on record in the form of affidavit. These persons were also cross examined by the representative of workman. The Labour Court after considering the evidence available on record held the action of the respondents to dismiss the petitioner from services proper and valid. Hence this writ petition is filed by the petitioner workman challenging the award referred above dated 19.12.2001.

A notice to show cause to the respondents was issued by this Court in present writ petition and in pursuant thereto a reply to the writ petition has been filed on behalf of the employer.

I have heard counsel for the parties and also perused the award impugned and other documents available on record.

The grounds to challenge the award impugned as formulated by the counsel for the petitioner are as under:-

> "(1)The learned Judge while passing the award impugned erred as he accepted the evidence produced by the employer without verifying their truthness. The learned Judge, Labour Court acted in quite mechanical manner and relied upon the evidence which is false and fabricated.
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> (2)The learned Judge, Labour Court, Jodhpur passed the award impugned on basis of the evidence which was recorded behind the back of the workman and, therefore, the gross violation of principles of natural justice has not been taken into consideration by the court below.
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> (3)The learned Judge failed to appreciate that the petitioner worked with the respondents with all dedication and he was victimised only with view to protect one

Shri R.S.Shekhawat who was keeping enmity with the girl who made complaint against the petitioner.

(4)The employer punished the petitioner for an allegation which also amount a serious offence under Indian Penal Code but no criminal case was lodged against the petitioner. This clearly shows that there was no truth in the allegation levelled.

The first contention of the counsel for the petitioner to the effect that the Labour Court erred while relying upon the evidence produced by the employer is having no merit. It is pertinent to note that the statements of the warden of the hostel and other co-employees were recorded before the Labour Court in the form of an affidavit. All these persons were cross examined by the representative of the workman. The warden of the hostel as well as the Assistant Director, Sports Authority of India in their affidavit in quite unambiguous terms narrated the factual position which remained intact in cross examination too. There is no reason to disbelieve these persons.

I failed to understand the basis on which the petitioner has alleged the evidence adduced by the employer as false and fabricated. Sufficient material is available on record to establish the fact that the petitioner acted with ill-will with view to molest a

girl resident of the hostel run by Sports Authority of India.

The second contention of the counsel for the petitioner with regard to violation of principles of natural justice is absolutely misconceived. In the present case an opportunity was given to the petitioner by the employer to explain his conduct before the fact finding committee. Beside this he was having ample opportunity to prove his innocence before the Labour Court. The petitioner failed to do so. It is pertinent to note that the statements of the members of fact finding committee were recorded before the court below in the form of affidavit and they were also cross examined by the representative of the workman.

In similar circumstances Hon'ble Supreme Court in the case of Hira Nath Mishra and others v. The Principal, Rajendra Medical College, Ranchi and another, AIR 1973 SC 1260, held as under:-

> “7.The High Court was plainly right in holding that principles of natural justice are not inflexible and may differ in different circumstances. This court has pointed out in Union of India v. P.K.Roy, (1968)2 SCR 186 at page 202 that the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends

upon several factors. In the present case the complaint made to the Principal related to an extremely serious matter as it involved not merely internal discipline but the safety of the girl students living in the Hostel under the guardianship of the college authorities. These authorities were in loco parentis to all the students – male and female who were living in the Hostels and the responsibility towards the young girl students was greater because their guardians had entrusted them to their care by putting them in the Hostels attached to the college. The authorities could not possibly dismiss the matter as of small consequence because if they did, they would have encouraged the male student rowdies to increase their questionable activities which would, not only, have brought a bad name to the college but would have compelled the parents of the girl students to withdraw them from the Hostel and, perhaps, even stop their further education. The Principal was, therefore, under an obligation to make a suitable enquiry and punish the miscreants.

8.But how to go about it was a delicate matter. The Police could not be called in because if an investigation was started the female students out of sheer fright and harm to their reputation would not have cooperated with the police. Nor was an enquiry, as before a regular tribunal, feasible because the girls would not have ventured to make their statements in the presence of the miscreants because if they did, they would have most certainly exposed themselves to retaliation and harassment

thereafter. The college authorities are in no position to protect the girl students outside the college precincts. Therefore, the authorities had to devise a just and reasonable plan of enquiry which, on the one hand, would not expose the individual girls to harassment by the male students and, on the other, secure reasonable opportunity to the accused to state their case.

11.Rules of natural justice cannot remain the same applying to all conditions. We know of statutes in India like the Goonda Acts which permit evidence being collected behind the back of the goonda and the goonda being merely asked to represent against the main charges arising out of the evidence collected. Care is taken to see that the witnesses who gave statements would not be identified. In such cases there is no question of the witnesses being called and the goonda being given an opportunity to cross examine the witnesses. The reason is obvious. No witness will come forward to give evidence in the presence of the goonda. However unsavoury the procedure may appear to a judicial mind, these are facts of life which are to be faced. The girls who were molested that night would not have come forward to give evidence in any regular enquiry and if a strict enquiry like the one conducted in a court of law were to be imposed in such matters, the girls would have had to go under the constant fear of molestation by the male students who were capable of such indecencies. Under the circumstances the course followed by the Principal was a wise one. The Committee whose

> integrity could not be impeached collected and sifted the evidence given by the girls. Thereafter the students definitely named by the girls were informed about the complaint against them and the charge. They were given an opportunity to state their case. We do not think that the facts and circumstances of this case require anything more to be done."

Applying the law laid down by Hon'ble Supreme Court as above, in my considered opinion, sufficient opportunity was given to the petitioner by the employer as well as before the Labour Court to defend himself. An enquiry was conducted by a competent committee consisting of three officers of the Sports Authority of India. There is nothing on record to impeach their integrity and objectivity. The complaint of the petitioner with regard to violation of principles of natural justice, therefore, is of no consequence. In present set of facts there was no violation of principles of natural justice.

The contention of the counsel for the petitioner that no complaint was made by the employer to the police shows that there was no truth in the allegation levelled against him, is also meritless. In the case of Hira Nath Mishra (supra) Hon'ble Supreme Court has thrown sufficient light with regard to circumstances prevailing in the society and the plight of girl students. In these circumstances merely on the

count that no complaint was filed by the employer before the police authority does not make the entire incident concocted and false.

No material has been placed on record by the petitioner to substantiate the contention that he was victimised to save Shri R.S.Shekhawat. The act of R.S.Shekhawat is nothing to do with the act of the petitioner. It is also informed to the Court by the counsel for the respondent that disciplinary action has already been taken against Shri R.S.Shekhawat. Be that as it may, the action taken against the petitioner could not be held bad, even if it is assumed that no action has been taken against Shri R.S.Shekhawat.

In totality of facts and circumstances of the case I do not find any illegality or infirmity in the award impugned which may warrant interference of this Court in its extra ordinary jurisdiction.

The writ petition, therefore, dismissed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.